

Date: January 12, 2009

E-19J

Victoria J. Rutson, Chief  
Section of Environmental Analysis  
Surface Transportation Board  
395 E Street, SW  
Washington, D.C. 20423

**Re: Comments on the Surface Transportation Board Final Environmental Impact Statement for the Canadian National Railway Company Proposed Acquisition of the Elgin, Joliet and Eastern Railway. CEQ #20080510**

Dear Ms. Rutson:

In keeping with our responsibilities under the National Environmental Policy Act and Section 309 of the Clean Air Act, we have reviewed the Final Environmental Impact Statement (FEIS) for the Canadian National (CN) acquisition of the Elgin, Joliet and Eastern Railway (EJ&E). This proposal with new constructions would redirect traffic flow around an approximate 193-mile segment of existing railway, bypassing most of the central metropolitan Chicago area. The project would reroute freight traffic from CN center city rail lines, thus improving the safety and congestion of city streets and intersections, plus improving freight traffic flow through the region. At the same time, this rerouting of freight would have new impacts to the EJ&E railway arc and its associated roadways and communities.

Our October 3, 2008 letter, commenting on the Draft Environmental Impact Statement (DEIS), expressed environmental concerns regarding this project. In the DEIS, we identified concerns about air issues (quality, toxics, conformity and hotspots); water resources in relation to potential hazardous spills; noise and vibration; threatened and endangered species, their habitats and invasive species; environmental justice; cultural and historic resources; rail operations, at-grade crossings and safety; and indirect and cumulative effects.

We appreciate that the FEIS responded to so many of our concerns. We commend the Surface Transportation Board (STB), its consultants, and CN for proposal modifications made in response to public comments. Many impacts have been reduced or eliminated, and safety has been improved. Those responses to our comments include, but are not limited to:

### Air Issues

- ♦ considering air and other impacts for the no-action alternative, the proposal, and a maximum operations alternative
- ♦ providing three rail operations analyses, including train idling and congestion
- ♦ adding hot spot analyses and evaluating diesel Particulate Matter (PM) effects at crossings and railyards
- ♦ improving connection, curve and double-track designs to reduce air and other impacts
- ♦ agreeing to follow EPA Clean Diesel initiatives
- ♦ discussing greenhouse gases and climate change considerations with scientific data

### Water and Natural Resources Issues

- ♦ continuing cooperation in developing procedures and funding for addressing water and natural resource issues
- ♦ addressing stormwater run-off conditions
- ♦ clarifying CN's and EJ&E's safety records

### Noise and Vibration Issues

- ♦ providing understandable graphics showing noise impact areas
- ♦ coordinating with Fermi Laboratories regarding vibrations
- ♦ considering additional noise mitigation measures

### Environmental Justice Issues

- ♦ clarifying the environmental justice analyses
- ♦ improving the community outreach methods

### Historic and Cultural Resources Issues

- ♦ obtaining concurrences from the Indiana and Illinois State Historic Preservation Offices

### Rail Operations and Safety Issues

- ♦ supporting grade separation of two identified congested at-grade crossings
- ♦ reducing queuing impacts that could back into nearby roadways and intersections
- ♦ assuring that at-grade crossings having the potential to "trap vehicles" will be modified to avoid such incidents
- ♦ describing how METRA and Amtrak operations, including the STAR Line, could be accommodated along with the proposed freight operations

In the following discussion, we recommend the Record of Decision (Decision) clarify and address certain points raised in the FEIS and in subsequent discussions regarding: water / natural resources and hazardous spills; noise; rail operations, at-grade crossings and safety; and indirect and cumulative impacts.

### **WATER / NATURAL RESOURCES / HABITAT - INVASIVE SPECIES AND HAZARDOUS SPILLS**

The EIS did not provide a thorough identification of existing natural resources with a full assessment of potential impacts to those resources. In ongoing discussions with our agency and stakeholders representing various natural resources, STB has developed a mitigation process,

rather than a complete set of specific actions. We believe this process may result in a better final outcome. We referred to that process in our DEIS comment letter as an adaptive management program, but because that term has several specific meanings to different groups, we suggest the process be called the Natural Resource Adaptive Program (NRAP). We provide our concepts for such a program in an attached appendix, for STB's consideration. We highlight here that our recommendation includes that the NRAP should be for a period of twenty (20) years to assure success of the program; that its scope include all newly acquired EJ&E right-of-way, because it will all be under new management; and that special hazardous spill containment infrastructures be developed to protect highly sensitive natural resources where a spill impact would spread.

Wetlands and alternatives information will need to be more fully developed during the Clean Water Act, Section 404 permitting stage. Section 404 is jointly administered by EPA and the Army Corps of Engineers. Under this authority, we reserve the right to provide additional comments during the permit process. Under the environmental regulations for Section 404 permitting, a presumption exists that a non-water-dependent project, such as rail tracks, has available alternatives that can completely avoid impacts to wetlands. During the permitting process, CN, as permit applicant, need to provide more specific information on wetland delineation, quality assessment, potential impacts and mitigation possibilities. The Section 404 process can consider all project alternatives developed during the NEPA process, plus additional ones as needed, including permit denial.

We mention this particularly in light of potential wetlands issues related to the Munger Connection and the Gary Airport. In our DEIS comments, we recommended dropping the Munger connection, but were subsequently told that STB Decision No.9 prevented STB from taking that action. The STB April 21, 2008 Decision No.9 specifies that the STB concurs with the applicants that "...none of the connecting tracks that applicants propose to construct are extensions of or additions to a rail line that require prior approval under Section 10901." However, this is a business-operation-related determination. Decision #9 concludes with the statement: "Further, the potential environmental impact of the proposed construction of connecting tracks, if any, will be addressed in the environmental review process for the proposed acquisition of control." We understand this to be in keeping with the role of the NEPA process to inform federal decision makers so the human and natural environment is minimally impacted by their decisions, and as such STB retained its authority to deny an alternative when unacceptable environmental impacts may result. Therefore, we continue to recommend that the Munger Connection be dropped.

We raised information and status concerns about the Gary Airport because the actions were brought up, such as in Table 5.5.5 of the DEIS. Extension of the Gary Airport runway will require some modification of the EJ&E rail segment running past the end of that runway. At least some alternatives for resolving this conflict include modifying the EJ&E tracks, which would impact wetlands in that area. Resolution of these two interacting proposals, including their associated wetland losses, will need to occur as part of the Section 404 permit process for the CN acquisition. The STB Decision for this acquisition should address what impacts will result from these EJ&E - Gary Airport modifications and how they will be avoided, minimized or mitigated.

We suggest two technical modifications. Fen wetlands are discussed on p. 3.3-51, as groundwater recharge areas. Actually, fen wetlands are fed by groundwater *discharge*, although the recharge area for this bigger system is often nearby. The referenced article may appropriately explain this, but the FEIS summary text does not state this. In addition, EPA's authority regarding herbicides is misrepresented in voluntary measures No. 96 and 97. EPA does not "approve" pesticides; rather we have the authority to require that they be properly registered and labeled. We recommend you consult with our pesticides experts if additional information concerning these nuances is needed.

## **NOISE**

In our DEIS comments, we expressed concern about the STB moving from a 65 dBA / 3 dB threshold (decibel is an index of noise volume, and dBA is an average decibel level), to a revised 70 dBA / 5 dB threshold for impact mitigation. We also indicated that the FEIS should individually address sensitive receptors, such as schools, libraries, eldercare facilities, and hospitals, and discuss how each would be mitigated for specifically.

Following conversations with the STB staff and its consultants, and review of the Federal Transit Administration (FTA) Transit Noise and Vibration Impact Assessment Manual (Manual), we acknowledge the following considerations:

1- Although the FTA Manual, page 68, indicates several federal agencies have established specific guidelines for noise criteria, the FTA is not represented as having specified the 65 dBA threshold. In fact, the purpose of the Manual is to provide guidance in determining a threshold for each project. Although, the STB is not represented in the Manual, the DEIS clearly reaffirms that STB has a designated mitigation threshold as specified at 49 CFR 1105.7(e)(6), and that threshold is 65 dBA / 3dB.

2 - The Manual indicates that an absolute threshold of 75 dBA should never be exceeded, page 76;

3 - A Human Annoyance measure represented on a "Schultz curve," as on page 66 of the Manual, is one factor in considering Ldn thresholds (day-night weighted average sound levels). There is an ongoing debate in the academic research community regarding the data supporting the Schultz curve, suggesting that railroads may actually have a 5 dB higher level of public tolerance than most other transportation noise generators; and

4 - Various specific sensitive receptors, such as schools, libraries, eldercare facilities and hospitals, have special thresholds and measures in the Manual. The Manual specifies a 70 Ldn threshold as measured outside, but the impact inside is deemed to be reduced by 5 dB, thus attaining a 65 dBA threshold. Because schools and libraries are typically only affected by daytime noise, they use an Leq (daytime average) threshold, while hospitals, nursing care facilities and other such receptors occupied a full 24 hours per day, should be mitigated using an Ldn threshold.

Based upon these considerations, we can concur with the STB conclusions regarding the general noise impacts for this proposal. However, the two "precedent setting" EISs referenced in this FEIS as the STB's reason for using a 70 dBA / 5 dB threshold argued the impractical cost

of mitigation and extensive rural nature of those projects as reasons for allowing this departure from the STB 49 CFR 1105.7 (e)(6) standard. We recommend that the STB Decision provide a reasonable explanation for using the higher threshold in this urban setting.

Table 2.4-1 indicates the number of schools within 2.0 miles of the EJ&E tracks that could be impacted above the mitigation threshold as sensitive noise receptors. Our conversations with STB and consultant staff revealed that databases have been created with all the information for locating and identifying such sensitive sites. This data was not added to the clear aerial photo illustrations in Appendix A-8, Figure L-1 pages 123 to 261, showing possible locations for sound barriers in relation to the noise contours. The STB Decision should specify each sensitive receptor, locate them on the aerial photos and map, characterize them, (e.g. as school, hospital, etc.), and designate what specific detailed mitigation will be provided to reduce these impacts to within acceptable limits for each receptor. It is not appropriate to conclude that no mitigation is warranted for the new receptors along the EJ&E arc, merely because noise impacts will be reduced along CN's existing tracks. Every noise receptor should be protected where practical, from noise exceeding the threshold. The Decision should also specify which of the cost-effective noise barriers indicated in Appendix A-8 will in fact be installed, their type and heights, and what mitigation will be provided for impacted receptors where barriers are not installed.

#### **RAIL OPERATIONS, AT-GRADE CROSSINGS AND SAFETY**

Voluntary mitigation measures VM 1 to 13, 28 to 30, and 64 to 65 along with the Section of Environmental Analyses (SEA) Final Recommended Mitigation Measures 13, 14, 17, 18, 20, and 43 together imply an Infrastructure Adaptive Program (IAP) approach to resolving at-grade crossing and safety concerns, as has been discussed since the DEIS. We recommend the STB Decision formalize these into an IAP program. This program would provide for both initial and ongoing funding for such infrastructure concerns, perhaps through a state or regional agency where federal, state, local and private funds would be received and managed. It also would provide for adjustments in the event actual crossing experiences differ from anticipated behavior. For example, crossings where signage is proposed may actually warrant gates, and anticipated traffic diversions may not occur as expected, suggesting a reevaluation may be necessary.

#### **INDIRECT AND CUMULATIVE IMPACTS**

The FEIS does an excellent job of reporting and responding to the overwhelming number of public comments on this proposal. However, we note that the response to our request for a more complete analysis of indirect and cumulative impacts, page 3.3-53, has not been satisfied. The FEIS does not present an adequate indirect and cumulative analysis. As indicated above, wetlands at the Munger Connection and related to the Gary Airport modifications should be included in such an analysis. Apparently an analysis was done for the heron rookery at Renwick Lake because a summary conclusion of no impact is reached, but no supporting analysis is presented. The Decision should clarify what indirect and cumulative analysis STB has considered in reaching its conclusions.

We appreciate the opportunity to review and comment on the DEIS and FEIS for this project. Please forward a copy the STB Decision to my attention. Should any questions arise, please contact me or Norm West, of my staff, at 312 – 353 – 5692 and [west.norman@epa.gov](mailto:west.norman@epa.gov) .

Sincerely,

/ S /

Kenneth A. Westlake, Supervisor  
NEPA Implementation  
Office of Enforcement and Compliance Assurance

Cc: Shawn Cirton, US FWS  
Ronald Abrant, US Army Corps of Engineers  
John "Ole" Oldenburg, Forest Preserve District of DuPage

## APPENDIX - Concepts for a NATURAL RESOURCES ADAPTIVE PROGRAM

Our recommendation of a Natural Resource Adaptive Program (NRAP) would provide for administering the avoidance, minimization and mitigation measures related to the STB Decision. It would thus include all the related Voluntary Mitigations (e.g. VM 22 to 26, 49 to 63, 84 to 108) and Section of Environmental Analyses Recommended Mitigation Measures (SEA-MM 32 to 41, 46 to 49, 52 to 63). NRAP would further provide for a more complete survey of the project area and inventory of resources. NRAP would also establish mitigation procedures to be implemented and modifications that may be needed over time. This would be true, for example, in locating, designing and monitoring our proposed hazardous spill containment basins at select sensitive resources, for use by the emergency responder teams.

### WHO

We recommend that CN identify a staff person to act as a liaison spokesperson for the corporation. All the regional natural resource stakeholders along the EJ&E railway arc and associated tracks have already designated an initial liaison spokesperson for their concerns, John "Ole" Oldenburg, Director, Office of Natural Resources, Forest Preserve District of DuPage County. CN should fund the establishment and maintenance of a stakeholder-run website for NRAP, which would include contact information for appropriate persons within CN and each of the stakeholder groups, along with all proposal related projects, data and information. This website would provide information regarding the NRAP process to the public

The stakeholder group would include all entities that are stakeholders regarding some natural resource. This would include, but not be limited to, relevant divisions of both Indiana and Illinois environmental and natural resource agencies. All county agencies responsible for entities such as parks, forest preserves, and open spaces should be represented. Communities should be represented by their appropriate offices, both for their public lands and to represent their private landowners. Non-governmental organizations (NGO), such as those broadly represented in the Chicago Wilderness coalition, should have representation in this stakeholder group. Federal agencies such as EPA, Fish and Wildlife Service, and the Army Corps of Engineers would have representation in the group too.

As the regional natural resources stakeholder group has discussed to date, the state and county agencies responsible for public lands and water resources would have a major voice in this group because of the significance of direct, indirect and cumulative impacts to their holdings and the potential for broader impacts to the region. All natural resource concerns should be brought to and considered within this group. This approach would provide for regional coordination. This is important since many natural resources, although locally used and administered, are regional assets.

### WHAT

We recommend that STB should stipulate that CN establish a separate and specific fund for this NRAP group. In cooperation with CN, the NRAP group would arrange to undertake an extensive detailed natural resources survey, inventory and assessment needed to understand the

full extent of what project activities might impact. This survey should be conducted over at least one full year cycle to capture seasonal variations. Together, CN and NRAP would determine potential impacts and then identify appropriate measures to avoid and minimize those impacts. Finally, NRAP would jointly identify what mitigation efforts should be implemented. We acknowledge that railroad impacts to natural resources in such an urban setting are not well understood, and that this effort will gather information on this issue. This is where local, volunteer and NGO groups may be very helpful in monitoring and data collection activities.

The NRAP group would identify specific representatives to receive emergency responder training for protection of their resources. Together, CN and the NRAP would establish emergency response equipment sites and materials specifically oriented to each of the natural resources. This would include the location and design of hazardous spill containment basins or facilities. Containment basins are NOT to anticipate where a spill might occur and thus capture it. Rather these containment basins would be located near selected sensitive resources so emergency responders could transfer leaking materials to such a containment. This would hold leaking material from rapidly dispersing into the environment. The optimal conception and design of these would need to be developed.

The NRAP activities should be integrated with CN's right-of-way maintenance procedures. This would facilitate what general measures might be used by all, and what specific local situations may be better handled by the NRAP groups. For example, resource groups might provide services to CN, such as annual burning of native vegetative areas and identifying invasive species problems and how to address them jointly with the managers of resource lands.

Threatened and endangered species and impacts to them can be initially identified, but they may change over time as the railroad operations progress or reproductive and migratory habits shift in response to those operations. The NRAP working with CN would monitor and track these transitions and agree to appropriate steps to be taken to avoid, minimize or mitigate such impacts.

NRAP's experience in one location could inform actions in other locations. Thus, NRAP would facilitate communication and possibly better planning for multiple eventualities.

## **WHEN**

We appreciate the CN position that they can only project their operations for a couple of years. However, CN will operate along this right-of-way for many years into the future and thus continue to have impacts to these natural resources. These natural resources will take a long time to respond to the changes in operation along this railway. Measures taken to avoid, minimize and mitigate such impacts will require time to be implemented and evaluated to determine the degree of their success, or if additional steps need to be taken. This cycle of implementation, evaluation, and modification is the essence of adaptive management. Therefore, we recommend that STB stipulate this NRAP structure, process and funding be established for a minimum of twenty (20) years.



## **WHERE**

The STB stipulated the scope of this NEPA process would only cover the right-of-way where CN will add new service levels. We have pointed out that these natural resource impacts will change along every property component of the EJ&E acquisition due to management protocols and should be covered by this NRAP arrangement. Therefore, the entire EJ&E arc, including the Leighton to Waukegan terminus, all sidings and spurs, extensions and abandoned or unused portions of track should be included in this process.

## **HOW**

This NRAP process should be funded by an initial contribution from CN with an entity that could also receive contributions from federal, state and local governments, plus private, corporate and non-profit sources for these management and mitigation purposes. Additional funding on an annual basis, sufficient to meet the established needs, should also be stipulated. A process for evaluating funding needs could be developed by the CN and NRAP if they mutually agreed it was warranted, or STB agreed.

The Illinois Natural Resources/Water Resources Stakeholder Group (INR/WRSG) has submitted a proposal similar to this, albeit with certain focused and more specific areas of concern. We encourage the STB to consider the INR/WRSG proposal in the framework of our